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| EXAMINER |
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| ART UNIT | PAPER NUMBER |
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3751

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,089

Applicant(s)

BERLOVAN ET AL.

Examiner

Kathleen J. Prunner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005 and 24 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-20, 22 and 23 is/are allowed.
- 6) ☒ Claim(s) 1-3, 21 and 24-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>032405</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The replacement drawing sheets were received on March 21, 2005. These drawings are approved. However, the needed corrections are incomplete as noted below.
2. The drawings are objected to because: (A) Figs. 3 and 4 should include bracketing, }, to indicate that the elements therein constitute a single entity. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
3. In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Marked-up Drawings" and must be presented in the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

Response to Amendment

4. The amendment filed March 21, 2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the underlined portion to lines 2-3 of the Abstract, i.e., that the “one or more external apparatus” could be constituted by “such as arm rests, handles or baskets”.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 26-28 rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for “A pair of flanges or wings extends from the sides of the seating ring, and may further include mounting openings for armrests and/or handles and for a utility basket” (note lines 3-5 in ¶ 0009 on page 3), “a pair of arm rests, shown in Fig. 1 at 110. The arm rests have upright legs 112 with pegs ... can be mounted in receptacle 116 (Fig. 5) that are formed in the flanges 90, 92” (note lines 4-7 in ¶ 0033 on page 8) and “the flanges 90, 92 each have a further central socket 118 that can receive a mounting bracket of an optional auxiliary basket 120” (note lines 1-2 in ¶ 0034 on page 9), does not reasonably provide enablement for the wings to further contain openings for attachment of “an external apparatus”, as called for by claim 26. The specification fails to support or describe what structural elements constitute such “an external apparatus”. Thus the specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

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7. Claims 29 and 30 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 29 calls for a method of installing an elevated toilet seat comprising the steps of: a. removing the standard toilet seat from the toilet; b. attaching to the upper rim of the toilet bowl a mounting bracket having a first attachment element; and c. engaging the second attachment element with the first attachment element and pushing the elevated toilet seat toward the mounting bracket. Claim 30 calls for the method to further comprise the step of re-attaching the standard toilet seat to the mounting bracket. However, the originally filed specification fails to describe or support a method of installing an elevated toilet seat commensurate with these claims.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-3, 21, 24-27, 29 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Ellis. Ellis discloses an elevated toilet seat assembly, which is mountable on a toilet bowl 10 having an upper rim 12, having all the claimed features including a mounting bracket (constituted by seat fixing bar assembly 30) having a base portion 31 connectable to the toilet bowl 10 (note lines 26-30 and 39-41 in col. 3), the base portion 31 having a first end portion (constituted by one of the end portions adjacent the edges 38, note Fig. 5) which extends beyond the perimeter of the upper rim 12 (note lines 34-37 in col. 3 and Figs. 2-4) when the mounting bracket 30 is attached to the toilet bowl 10, and a first attachment element (constituted by the mounting bar 34) extending from a front edge of the first end portion of the mounting bracket 30 (note Figs. 5 and 6); and a seating ring (constituted by the raised toilet seat 40) including a riser

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(constituted by wall 50, note Fig. 2) engageable with the upper rim 12 of the toilet bowl 10 (note lines 13-16 in col. 4) and a second attachment element (constituted by mounting sections 72, 74) releasably engageable with the first attachment element 34 (note Fig. 4). With respect to claim 2, Ellis also discloses that the base portion 31 further comprises a second end portion (constituted by the other one of the end portions adjacent the edges 38, note Fig. 5) opposite the first end portion 38, and the mounting bracket 30 further comprising two first attachment elements 39 extending from the first and second end portions (note Figs. 4 and 5), and two second attachment elements 72, 74 formed on the seating ring 40 which are releasably engageable with the first attachment elements 39 (note Fig. 4). With respect to claim 3, Ellis further discloses that the first attachment elements 39 are spaced apart from one another sufficiently to provide access to the base portion 31 for attachment of a standard toilet seat (note lines 43-46 in col. 2). With regard to claim 21, Ellis discloses an elevated toilet seat, which is in removable engagement (note lines 48-53 in col. 4) with a toilet bowl 10 having an upper rim 12, having all the claimed features including a mounting bracket (constituted by seat fixing bar assembly 30) removably attachable (via bolts 22 and apertures 31a, note lines 39-41 in col. 3) to the toilet bowl 10 and including a first attachment element (constituted by mounting bar 34) extending from a front edge of an end portion of the mounting bracket 30 (note Fig. 5); and a seating ring (constituted by the raised toilet seat 40) including a riser (constituted by wall 50, note Fig. 2), a second attachment element (constituted by mounting sections 72, 74), and a pair of wings (constituted by the outwardly extending areas connected to the arm supports 60, 62, note Fig. 4) extending from the sides of the seating ring 40 (note Fig. 4), the first attachment element 34 being releasably engageable with the second attachment element 72, 74 (note Fig. 4). With regard to claim 24, Ellis further discloses that the second attachment element 72, 74 includes a receptacle and a pocket (constituted by the depressions or recessions 79) which inherently define a catch therebetween. With regard to claim 25, Ellis additionally discloses that the catch comprises a lip (constituted by the inwardly extending portions of flanges 76, note Fig. 4) on the underside thereof. With respect to claim 26, Ellis also discloses arm supports 60, 62 that can be either molded integrally

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with the seat 40 (note lines 55-58 in col. 3) or formed as separate members thus constituting an external apparatus fixed to the seat by bolting or riveting (note lines 22-26 in col. 5) which of necessity inherently requires use of openings or holes in the wings to accommodate the bolts or rivets. With regard to claims 26 and 27, it is considered that the wings of Ellis would inherently contain openings for attachment of the arm supports or rests when the arm rests are formed of separate members fixed to the seat by bolting or riveting. With respect to claim 29, Ellis inherently discloses a method of installing an elevated or raised toilet seat having a seating ring with a second attachment element formed thereon on a toilet bowl having an upper rim and a standard toilet seat, comprising the steps of: removing the standard toilet seat from the toilet (note lines 13-25 in col. 3); attaching to the upper rim of the toilet bowl a mounting bracket having a first attachment element (note lines 26-41 in col. 3) extending from a front edge of an end portion of the mounting bracket (note lines 29-31 in col. 3 and Fig. 5); and engaging the second attachment element with the first attachment element and pushing the elevated toilet seat toward the mounting bracket (note lines 3-21 in col. 4). With respect to claim 30, Ellis further discloses that the method further comprises the step of re-attaching the standard toilet seat to the mounting bracket (note lines 41-45 in col. 3).

Allowable Subject Matter

10. Claims 4-20, 22 and 23 are allowed.
11. Claim 28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 1st paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

12. Applicants' arguments filed March 21, 2005 have been fully considered but they are not deemed persuasive.

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13. Applicants' arguments regarding the rejection of claims 26-28 under the first paragraph of 35 USC 112 have been carefully considered. However, applicants' specification fails to fulfill the requirements of the statute. Applicants' specification fails to either support or describe what is meant by "external apparatus" or what structure constitutes such external apparatus. Hence, applicants' specification does not contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same. The term "external apparatus" is so broad that it could possibly include other elements not even described in applicants' specification such as a towel rack, a toilet roll holder or a toilet bowl cleaning brush holder.

14. Applicants' arguments regarding the rejection of claims 29 and 30 under the first paragraph of 35 USC 112 have been carefully considered. However, applicants' specification fails to fulfill the requirements of the statute with regard to a method of installing the toilet seat. Applicants' specification fails to support or describe the particular method of installing an elevated toilet seat as defined by these claims. Rather applicants' specification merely describes the various structural elements shown in the drawing figures with regard to an elevated toilet seat. Since it is known that the toilet seat is usually a separate purchase when purchasing a toilet, a totally different method of installing the toilet seat other than that claimed could include a toilet bowl that is only provided with an elevated toilet seat and hence does not require removal of a standard toilet seat.

15. With respect to applicants' arguments regarding the art rejection of the claims and the Ellis reference, the Ellis reference does indeed disclose a first attachment element, constituted by the mounting bar 34, that extends from a front edge of the first portion of the bracket 30, as clearly pointed out in the above rejection of the claims. The terms "front" and "rear" are relative terms and it is considered that the mounting bar 34 is attached to the front edge or top exposed edge of the solid web 32 portion of the bracket 30 as shown in Figs. 5 and 6 of the reference. It

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is considered that to the installer of the bracket, the mounting bar 34 would be the front of the bracket 30.

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Kathleen J. Prunner, whose telephone number is 571-272-4894.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu, can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kathleen J. Prunner

September 9, 2005



DAVID J. WALCZAK
PRIMARY EXAMINER